IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15456 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PUNJALBHAI RANCHHODBHAI RABARI

Versus

STATE OF GUJARAT

Appearance:

MR PM BHATT for Petitioner No. 1

MR NAGESH SOOD, AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 05/08/2004

ORAL JUDGEMENT

Rule. Mr.Nagesh Sood, Ld. AGP waives service of rule on behalf of the respondents. With the consent of the parties, the matter is taken up for final hearing.

2. The petitioner was allotted/granted land admeasuring 680 sq.mtrs. of land situated at Village Vadhvan for the purpose of running hotel by order dated 4.4.1990. It seems that the petitioner has encroached

upon the Government land initially to the extent of 1083.55 sq.mtrs. of land. An application was submitted to the Collector, Surendranagar for regularization of the encroachment and its possession. The Collector, Surendranagar by its order dated 20.4.1996 directed that the valuation of the land is fixed at Rs.896/- per sq.mtr. and the consent of the petitioner was sought as to whether the petitioner is ready and willing to make the payment of Rs.9,17,861/- towards the price of the land admeasuring 1083.55 sq.mtrs. of land. It is the case of the petitioner that the petitioner did not respond to the communication dated 20.4.1996. However, it is the case of the petitioner that the Collector of its own approached the State Government and requested to grant approval for regularization of the encroachment of the petitioner by considering the market price of the land in question at Rs.120/- per sq.mtr. and considering two and half times, the price would come to Rs.2,55,000/and accordingly by communication/order dated 25.6.1997, the State Government, Revenue Department granted its approval. However, it seems that the approval dated 25.6.1997 was with regard to 850 sq.mtrs. of land only instead of 1083.55 sq.mtrs of land and therefore, on the request made by the Collector, Surendranagar vide communication dated 19.8.1997, the State Government, Revenue Department modified its earlier order dated 25.6.1997 by order dated 5.12.1997 and granted approval for regularization of 1083.55 sq.mtrs. of land directing the petitioner to pay an amount of Rs.3,25,065/-. It is the case of the petitioner that the said communication was interse and the present petitioner was not served with the aforesaid order/communication and subsequently, the Collector also did not inform the petitioner with regard to payment of Rs.3,25,065/-. It is the case of the petitioner that the petitioner was always ready and willing to make the payment towards the market price determined by the State Government and/or the Collector. However, on the basis of the order passed by the State Government as the Collector was not passing the order, the petitioner approached the State Government by making a representation dated 29.7.2003 and requested to accept the amount determined vide its order dated 5.12.1997. Inspite of the aforesaid facts, the Collector, Surendranagar by its communication/order dated 23.10.2003 informed the petitioner that as the petitioner is not ready and willing to pay the market price determined by the District Valuation Committee and therefore, the application of the petitioner for regularization is rejected. Being aggrieved and dissatisfied by the said communication dated 23.10.2003, the petitioner has preferred the present Special Civil

Application under Article 226 of the Constitution of India.

3. This Court issued notice on 30.10.2003 and on the statement being made on behalf of the petitioner that they are prepared to pay Rs.3,25,065/- as price determined by the order dated 5.12.1997 and they will pay the same by 30.11.2003, interim relief in terms of Para 10(C) was granted. Shri P.M.Bhatt, Learned Advocate has submitted today that the petitioner has already deposited an amount of Rs.3,25,065/- as price determined by order dated 5.12.1997 before 30.11.2003. The said amount is deposited by him in this Court.

4. Shri P.M.Bhatt, Learned Advocate for the petitioner has submitted that the impugned order/communication dated 23.10.2003 is contrary to the order passed by the State Government dated 5.12.1997. The petitioner submits that in fact, on the basis of the approval granted by the State Government dated 5.12.1997, the Collector was required to pass a consequential order directing the petitioner to pay an amount of Rs.3,25,065/- but no order came to be passed by the Collector and therefore, no opportunity was given to the petitioner to deposit the aforesaid amount. He has further submitted that the Collector could not have gone beyond the order passed by the State Government dated 5.12.1997. It is further submitted that even the Collector, Surendranagar while passing the impugned order/communication dated 23.10.2003 has not considered the aforesaid approval granted by the State Government dated 5.12.1987. He has also further submitted that before passing the aforesaid order dated 23.10.2003, no opportunity of being heard has been given to the petitioner. He has submitted that if opportunity of hearing would have been given to the petitioner then he would have pointed out the approval/order passed by the State Government dated 5.12.1997. He has further submitted that in fact, the petitioner was ready and willing to make the payment of the market price and the penalty of two and half times of market price but as no communication was given to him, he could not deposit the amount and therefore, there is no fault on the part of the petitioner.

5. Heard the Learned Advocates appearing for the parties.

6. On the basis of the recommendation of the Collector and the application sent by the Collector, Surendranagar, the State Government granted approval on

5.12.1997 with regard to regularization of encroachment of 1083.55 sq.mtrs. price was determined at the rate of Rs.120/- per sq.mtr. and considering two and half times market price, the amount was fixed at Rs.3,25,065/-. After the approval, the Collector was required to pass a consequential order for regularization and directing the petitioner to pay an amount of Rs.3,25,065/-. It seems that no order came to be passed by the Collector and therefore, the petitioner was not in a position to pay the amount of Rs.3,25,065/-. Under the circumstances, there was no fault on the part of the petitioner in not depositing the amount of Rs.3,25,065/-. While passing the impugned communication dated 23.10.2003, the Collector, Surendranagar has not considered the approval given by the State Government dated 5.12.1997 but the Collector could not have insisted for the payment of market price as prevalent in the year 2003 as determined by the District Valuation Committee in view of the fact that the approval was already granted by the State Government on 5.12.1997. In fact, the Collector was required to pass a consequential order for regularization and directing the petitioner to pay an amount of Rs.3,25,065/- on the basis of the approval given by the State Government dated 5.12.1997. Under the circumstances, the impugned order passed by the Collector, Surendranagar dated 23.10.2003 is absolutely illegal and arbitrary and requires to be quashed and set aside. It is also pertinent to note that before passing the impugned order/communication dated 23.10.2003, no opportunity of being heard was given to the petitioner and straightaway the application of the petitioner for regularization came to be rejected.

7. The petitioner has already deposited an amount of Rs.3,25,065/- which is lying with this Court being the amount determined by the State Government in its communication/approval dated 5.12.1997. Under the circumstances, the Collector, Surendranagar is directed to pass a consequential order of regularization of the petitioner with regard to 1083.55 sq.mtrs. considering the approval given by the State Government dated 5.12.1997. Office is directed to issue a cheque of Rs.3,25,065/- in favor of the petitioner and in turn, the petitioner is directed to deposit/pay an amount of Rs.3,25,065/- with 6% interest from 5.12.1997 till November, 2003 with the Collector, Surendranagar within a period of eight weeks from today and on such deposit, the Collector, Surendranagar is directed to issue a consequential order with regard to regularization as stated hereinabove immediately. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.R.Shah, J)

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